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Remarks/Arguments

This paper cancels claims 33-39, rejected, and adds new claims 40-62. Applicants reserve the right to prosecute the canceled claims at a later time. Support for the new claims is found, e.g., in Figures 5, 13, and 14 and the associated text. The new claims do not recite new matter.

By canceling the rejected claims, Applicants have rendered moot the Examiner's rejections. And, Applicants respectfully assert that the new claims are patentable over the Examiner's cited references because the references do not disclose or suggest all elements in the Applicants' new independent claims. For example, neither U.S. Patent No. 5,315,630 (Sturm et al.), nor U.S. Patent No. 4,724,480 (Hecker et al.), nor U.S. Patent No. 5,613,013 (Schuette) appear to disclose or suggest,

> ...selecting a portion of the first array and a portion of the second array such that the calculated intersection positions for each array substantially occupy the same position relative to the selected portions; and
> outputting an aligned stereoscopic image to a viewer by displaying the selected portion of the first array and the selected portion of the second array.

as recited in new independent claim 40. New independent claims 48 and 56 recite similar language.

Official Notice

The Examiner appears to take Official Notice twice in the Office Action. Applicants respectfully argue that such Official Notice is improper in both instances and request the Examiner provide documentary evidence.

At page 2, line 24, the Examiner appears to take Official Notice to the sentence that begins: "It would have been obvious ...." Such use of Official Notice is improper because the sentence is a legal conclusion and not a factual assertion.

At page 3, line 8, the Examiner appears to take Official Notice to the phrases: "... it would have been obvious ... to use a brightness value related to the marker with a degree of freedom from the value as that of claim 39, as this is a well known technique for detecting objects by only checking for large changes in brightness ...". Again, such use of Official Notice is improper because the sentence is a legal conclusion. Further, with reference to "the use of a brightness value related to the marker with a degree of freedom from the value as that of claim 39", Applicants believe such use of Official Notice is improper because this assertion is "not capable of instant and unquestionable demonstration as being well-known". See e.g., M.P.E.P. § 2144.03.

Prior Art

It appears from an "X" placed across the page that the Examiner has not considered references listed under "Other Art" in an information disclosure statement signed 5 March 2004 and apparently submitted when this application was filed on 7 March 2004. Applicants request that the Examiner consider these references because (a) they were properly submitted in an earlier application from which this application claims the benefit under 35 U.S.C. § 120, and (b) the information disclosure statement references this earlier application. See 37 C.F.R. § 1.98(d). Otherwise, Applicants respectfully ask the Examiner to explain why the references are not being considered so that any problem can be solved.

Conclusion

New claims 40-62 are pending after entry of this paper. Applicants request the Examiner reconsider the application and deem these new claims patentable. To expedite prosecution, Applicants invite the Examiner to contact their undersigned representative at (408) 523-2460 to

quickly resolve any questions that may arise (e.g., the references not considered in the information disclosure statement).

Any additional required fees or overpayments are authorized to be deducted or credited to Deposit Account No. 503404.

Respectfully Submitted,

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